

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Morenci Water and Electric Company

Docket No. OA04-2-000

ORDER GRANTING REQUEST FOR DISCLAIMER OF JURISDICTION

(Issued December 21, 2004)

1. On December 5, 2003, Morenci Water and Electric Company (Morenci) filed a request for Commission determination that it is not a public utility under section 201(e) of the Federal Power Act (FPA)¹ and waiver of Order No. 888's² reciprocity requirement, or, in the alternative, waiver of the requirements of Order Nos. 888 and 889.³ As discussed below, we will grant Morenci's request for disclaimer of jurisdiction and further find that Morenci is not subject to Order No. 888's reciprocity requirement.

Background

2. Order No. 888 requires all public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to have on file with the Commission open access non-discriminatory transmission tariffs that contain

¹ 16 U.S.C. § 824 (2000).

² *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.* Transmission Access Policy Study Group, *et al.* v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom.* New York v. FERC, 535 U.S. 1 (2002).

³ *Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049 (1997), *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

minimum terms and conditions of non-discriminatory transmission service.⁴ One provision of the pro forma open access tariff is a reciprocity provision. Under this provision, all transmission customers, including non-public utilities, receiving transmission service under a public utility's open access transmission tariff, must agree to provide comparable transmission service to the transmission provider on similar terms and conditions over facilities used for the transmission of electric energy in interstate commerce owned, controlled or operated by the transmission customer and over facilities used for the transmission of electric energy in interstate commerce owned, controlled or operated by the transmission customer's corporate affiliates.⁵

3. Order No. 889 obligates any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce to develop or participate in an Open Access Same-time Information System (OASIS) and abide by certain standards of conduct.

4. The Commission has disclaimed jurisdiction over non-public utilities where those utilities have shown that they neither make sales of power for resale in interstate commerce, nor provide transmission services in interstate commerce.⁶ In those cases, it has further found that those utilities may be granted waiver of Order No. 888's reciprocity requirement.⁷

Morenci's Filing

5. In support of its request for disclaimer of jurisdiction, Morenci states that it serves only retail customers, who are primarily residential customers. Morenci states that its facilities consist of 30 miles of 13.8 kV line, 35 miles of 2.4 kV line and 5 distribution substations. Morenci states that all of its lines are used for local distribution purposes. Morenci states that, as shown on the map attached to its filing, its existing facilities are primarily radial, and adds that the sole purpose of its facilities is to transmit power to its distribution substations and then across its lines to its customers. Morenci further asserts that: (1) its facilities are in close proximity to its retail customers and radial in nature; (2) power that flows into the local distribution system at the PD-Morenci Substation never flows out; (3) when power enters at this point it is not transported to another

⁴ Order No. 888 at 31,635.

⁵ *Id.* at 31,935.

⁶ See, e.g., *Easton Utilities Commission, et al.*, 83 FERC ¶ 61,334 at 62,343 (1998); *Dakota Electric Association, et al.*, 78 FERC ¶ 61,117 at 61,450-51 (1997); *Central Electric Cooperative*, 77 FERC ¶ 61,076 at 61,314-15 (1996).

⁷ See *Dakota Electric Association, et al.*, 78 FERC at 61,450; *Central Electric Cooperative*, 77 FERC at 61,314-15.

market, but rather is consumed in a comparatively restricted geographic area; and (4) its lines are relatively low voltage. In addition, Morenci states that it does not own or operate facilities that are subject to the Commission's jurisdiction, and that it has not been subject to regulation as a public utility under the FPA. Based upon the foregoing, Morenci asserts that it neither engages in wholesale sales of electric energy in interstate commerce, nor provides transmission service in interstate commerce.

6. Notice of Morenci's filing was published in the *Federal Register*,⁸ with interventions and protests due on or before January 5, 2004. None was filed.

Discussion

7. For the reasons set forth by Morenci, and consistent with Commission precedent, we will grant Morenci's request for a disclaimer of jurisdiction. Morenci is not a public utility, because it does not make sales of electric energy at wholesale in interstate commerce, does not transmit electric energy in interstate commerce, and does not own or operate facilities subject to the Commission's jurisdiction. In addition, in light of the fact that Morenci does not own, control, or operate facilities for the transmission of electric energy in interstate commerce, it would not be subject to the reciprocity provision in the pro forma open access tariff. Of course, if the facts change, and, as a result, Morenci becomes a public utility and owns, operates, or controls jurisdictional transmission facilities, it would, absent further waiver, become subject to all of the requirements of Order Nos. 888 and 889.

The Commission orders:

Morenci's request for a disclaimer of jurisdiction is hereby granted.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁸ 68 Fed. Reg. 74,231 (2004).